

CHAPTER 11: LOAN RESTRUCTURING

11.1 INTRODUCTION

During the term of an Agency loan, borrowers may request Agency consent to restructure the loan for their project that will simplify the operation of the project or help address financial distress due to factors beyond the borrower's control. One example is when a borrower requests that loans be restructured in order to reduce administrative burden, improve cost-effectiveness and efficiency, or more effectively use the physical facilities common to projects. Another example is a project experiencing negative cash flow due to increases in local taxes and utilities that are rising faster than area rents. The methods used by the Agency to help accomplish the objectives stated above include loan agreement or loan resolution consolidation, loan consolidation, reamortization, and loan adjustments (writedowns).

This chapter describes the requirements for each of these loan restructuring techniques, and Agency procedures for reviewing, approving, and implementing such requests.

SECTION 1: ALLOWABLE TYPES OF RESTRUCTURING

11.2 OVERVIEW

As mentioned above, the loan restructuring activities that the Agency may approve include the following:

- **Loan Agreement or Loan Resolution Consolidation**, which is an administrative action whereby the loan agreements, or loan resolutions, for multiple projects held by the same borrower are consolidated and assigned a single new project number. The borrower still has separate loan notes and the Agency still tracks each loan individually, but all projects are administered by the Agency as if they were a single project.
- **Loan Consolidation**, which is the consolidation of multiple loans for a single property into a single loan, with one note and one payment.
- **Reamortization**, which is a rescheduling of a borrower's debt that allows for lower installments, thus decreasing the likelihood of default.
- **Loan Adjustments (Writedowns)**, which are reductions of the amount of the borrower's debt, allowing an otherwise sound project experiencing financial difficulties beyond its control to continue operating as a program property.

This section addresses the regulatory requirements associated with each activity.

11.3 LOAN AGREEMENT OR LOAN RESOLUTION CONSOLIDATION REQUIREMENTS [7 CFR 3560.410]

The Agency may approve the consolidation of loan agreements or resolutions regardless of the total amount of debt being consolidated as long as the loan agreements being consolidated represent loans made for the same purpose, to the same borrower, with the same plan of operation (e.g., nonprofit, limited profit, full profit). The terms and the due date of the loans involved must not be altered, and other security instruments must remain unchanged and must not be released.

Under no circumstances will loan agreements or loan resolutions be consolidated if the Agency's security position will be adversely affected. Any applicable restrictive-use provisions of the existing notes will continue to apply following consolidation.

11.4 LOAN CONSOLIDATION REQUIREMENTS [7 CFR 3560.410]

The Agency may approve loan consolidations under two circumstances:

- The loans are being transferred on new terms; or
- An initial and subsequent loan under one project number were closed on the same date at the same rates and terms.

The Agency may approve loan consolidations if, in addition to the above requirements, the following conditions are met:

- The promissory notes and the loan agreements or resolutions will be consolidated;
- Consolidation occurs on the Amortization Effective Date (AED) or as soon as possible after the AED is established;
- All project accounts being consolidated will be current after the consolidation process, unless otherwise authorized by the Administrator; and
- The Agency's security position will not be adversely affected.

11.5 REAMORTIZATION REQUIREMENTS [7 CFR 3560.455 (b)]

The Agency may approve the reamortization of any Agency multi-family housing loan account, although it will not reamortize accounts solely to remove a delinquency.

The Agency may reamortize accounts when doing so is in the best interest of the Government and when needed to improve the financial viability of the property and project operations. The Agency will not approve a loan reamortization if the reamortization will adversely affect the Government lien priority.

11.6 LOAN ADJUSTMENT (WRITEDOWN) REQUIREMENTS [7 CFR 3560.455(c)]

Borrower requests for loan writedowns must be part of an approved workout agreement with the Agency and be in the best interest of the Government. Writedowns are permitted with existing borrowers or transferees where:

- The causes are beyond the borrower's control—such as market weaknesses, unforeseen site problems, or natural disasters; and
- Sound management is evident or unsound management practices can be resolved by the removal of the responsible individuals in accordance with an approved work-out agreement with the Agency.

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SECTION 2: LOAN AGREEMENT OR LOAN RESOLUTION/LOAN CONSOLIDATION

11.7 OVERVIEW

Loan agreement or loan resolution consolidation offers several advantages. For instance, following loan agreement or loan resolution consolidation, all reporting, accounting, and project management requirements for the various projects being consolidated are fulfilled as a single project. In other words, borrowers need to maintain only one set of books and one operating budget, and can track all rents as a single project. In addition, because rental assistance agreements are not consolidated, borrowers can apply rental assistance across projects following consolidation. That is, waiting lists for the projects being consolidated will be combined and rental assistance can be assigned to eligible tenants in the newly formed “project” per assignment priorities.

Loan consolidation also offers several advantages. For instance, when consolidating a loan under new rates and terms in conjunction with a transfer, borrowers can combine notes and cost items. In addition, different portions of the property that may have been financed with separate loans can still be set up as distinct projects, but the borrower need track only one loan and one note.

State Directors or their designees may approve project or loan consolidations with the advice of OGC and when all required conditions outlined in this chapter are met.

11.8 BORROWER SUBMISSIONS

A. Loan Agreement or Loan Resolution Consolidation

A borrower requests a loan agreement or loan resolution consolidation by submitting the following forms to the appropriate Field Office:

- *Form RD 1944-34A, RRH Consolidated Loan Agreement;*
- *Form RD 1944-35A, Consolidated Loan Resolution;*
- *Form RD 1944-33A, Consolidated Loan Agreement;*
- *Form RD 1930-7, Multi-Family Housing Project Budget, as well as a project budget;*
- Updated loan agreements/resolutions; and
- Management plans.

B. Loan Consolidation

For loan consolidations, borrowers must execute a new *Form RD 1944-7, Multi-Family Housing Interest Credit and Rental Assistance Agreement*, for the new consolidated promissory note, and submit it to the Field Office. The Interest Credit Plan

originally established for the project applies to the consolidated note. If the Interest Credit Plan is changed by submitting a new *Form RD 1944-7, Multi-Family Housing Interest Credit and Rental Assistance Agreement*, Loan Servicers will enter the new plan for the project through the field office terminal.

11.9 AGENCY PROCESSING OF BORROWER SUBMISSIONS

A. Loan Agreement or Loan Resolution Consolidation

1. Complete Form RD 1965-17A, Multi-Family Housing Consolidation of Projects/Loan Agreements/Resolutions

The Servicing Office will complete *Form RD 1965-17A* to show all of the notes for the projects being consolidated.

2. Send Form to the State Office and Finance Office

The Field Office sends *Form RD 1965-17A* and a letter recommending the consolidation to the State Office for approval. The State office then will forward the materials to the Finance Office for processing.

3. Obtain OGC Guidance

OGC guidance is required to accomplish loan agreement or loan resolution consolidations. Under no circumstances will the Agency consolidate projects if the security position of the Agency will be adversely affected. If required by OGC, all of the loan agreements or loan resolutions being consolidated may be secured by one deed of trust or mortgage describing all of the loans for the projects.

4. Maintain Loan Terms and Due Date

The Agency will alter neither the terms nor the due date of the loan(s) involved. Other security instruments also remain unchanged, and will not be released following the consolidation.

B. Loan Consolidation

Loan Servicers should note that there are some potential obstacles to consolidating certain loans. For instance, the Finance Office is unable to consolidate loans unless the loans are on the same plan of operation. In addition, direct loans cannot be consolidated with interest credit loans, and loans with Section 8 subsidy cannot be consolidated with insured loans. In all other cases, however, the procedures outlined in this chapter will apply to loan consolidations.

1. Prepare Form RD 1944-52, Multi-Family Housing Promissory Note

Loan Servicers will prepare *Form RD 1944-52* for the notes or assumption agreements being consolidated. If the Field Office does not have possession of the

original note or assumption agreement, the Loan Servicer will call the Finance Office to request the return of the original form so it is in the Field Office before a new *Form RD 1944-52* is processed, or as soon as possible thereafter. Promissory notes should be prepared on a monthly payment basis, as appropriate.

2. Prepare a Consolidated Loan Agreement or Resolution

Loan Servicers will prepare a consolidated loan agreement or resolution using *Forms RD 1944-33A, Consolidated Loan Agreement, 1944-34A, RRH Consolidated Loan Agreement, or 1944-35A, Consolidated Loan Resolution*, as appropriate, to reflect current reporting requirements and the authorized initial investment attributable to the owner after the consolidation has occurred.

3. Obtain OGC Guidance

Consolidation of notes may only occur with OGC guidance. Under no circumstances will the Agency approve consolidation of promissory notes if the security position of the Agency will be adversely affected.

4. Complete Form RD 1965-17, Multi-Family Housing Note Consolidation and Send a Copy to the Finance Office

Loan Servicers complete *Form RD 1965-17, Multi-Family Housing Note Consolidation*, to show all of the notes that have been consolidated in the new *Form RD 1944-52, Multi-Family Housing Promissory Note*. Loan Servicers send a copy of *Form RD 1965-17* to the State Office for approval. The State Office then will forward *Form RD 1965-17* to the Finance Office for processing.

5. Stamp Notes or Assumption Agreements “Consolidated”

The original and Field Office copies of all notes or assumption agreements that are consolidated will be stamped “consolidated” by Loan Servicers. The original instruments being consolidated will be stapled to the “consolidated” note and filed in the safe in the Field Office. When the consolidated note has been paid in full or otherwise satisfied, Loan Servicers will handle it and all other instruments according to RD Instruction 1951-A, Account Servicing Policies.

6. File New Security Instruments

Loan Servicers will file new security instruments that describe the consolidated note to perfect the Agency lien position. If the new lien position taken is junior only to the previous lien position, the previous security instruments may be released with the guidance and assistance of OGC.

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SECTION 3: LOAN REAMORTIZATION

11.10 OVERVIEW

Reamortization is the process of revising an existing loan payment plan or schedule established for repayment of a loan. The new schedule is usually developed to enable the borrower to continue the objectives of the loan.

State Directors or their designees may approve the reamortization of Agency loans within their approval authority for the type of loan involved. Reamortization will not subject the borrower to any additional restrictive-use provisions beyond those associated with the original loan. For example, if there were 10 years of restrictive-use remaining on a loan prior to a reamortization, there would still be 10 years remaining following the action. If the original loan contained no restrictive-use provisions, the reamortization would not add new use restrictions.

11.11 ACCEPTABLE USES OF REAMORTIZATIONS

A. Allowable Conditions for Reamortizations

The Agency may consider approving a reamortization if any of the following four conditions are met:

1. Preventive Measure for a Borrower Likely to Experience Delinquency

The State Director determines that the borrower and tenants cannot reasonably be expected to continue to meet their obligations unless the account is reamortized to reduce substantially the installments and rental rates.

2. Corrective Measure to Help Delinquent Borrower Attain Successful Operation

The borrower has a substantial delinquency which cannot be cured within one year. In addition, the borrower must have acted in good faith and maintained compliance with all applicable Agency policies and procedures.

3. Incentive to a Borrower Requesting Prepayment

The borrower has received an equity loan as an incentive to avert prepayment, or a subsequent loan has been made to a nonprofit corporation or public agency to purchase a project to avert prepayment.

4. Measure to Improve Project Operations

The borrower is not delinquent or likely to become delinquent, but proposes the reamortization to improve project operations. The State Director's approval is required for such reamortization requests.

B. Requirements for Obtaining a Reamortization

In addition, borrowers must demonstrate that the following criteria are satisfied before the Agency will approve a reamortization:

- The reamortization must be in the best interest of the Government.
- The reamortization will enable the borrower to operate successfully and carry out the purpose of the loan.
- The Agency's lien position remains unchanged.
- The action is not proposed solely to remove a delinquency.

11.12 BORROWER SUBMISSIONS

To request a reamortization, the borrower must complete and submit to the Field Office *Form RD 1951-33, Reamortization Request*. Loan Servicers review the form and determine whether the required conditions for a reamortization exist.

11.13 AGENCY REVIEW AND APPROVAL

A. Field Office Actions

When the Field Office receives a request to reamortize, Loan Servicers will take several actions, as follows:

- Determine whether the conditions for a reamortization exist.
- Document the request in the official case file and on *Form RD 1951-33, Reamortization Request*.
- Submit the request, the case file, and other pertinent information to the State Office for review.

B. Evaluating Borrower Requests

To receive Agency approval, Loan Servicers must review the borrower's submission and Agency records to ensure that the reamortization meets all of the following requirements, and adequately document in the case file and on *Form RD 1951-33, Reamortization Request*, that the requirements are met. The analyses described below are used to evaluate all reamortization requests. Additional evaluation is required for requests involving projects with delinquencies or compliance violations (see paragraph 11.14).

1. Budget is Adequate

The borrower's budget or plan of operations must provide reasonable assurance of the following:

- The newly scheduled payments will be made according to the terms of the proposed reamortization;
- The charges for the use of the facility or service are within the payment ability of those it is intended to serve and are comparable to similar units in the area; and
- Applicable rent increase procedures will be followed if any rent increase is required.

2. Management is Adequate

The borrower must demonstrate the following:

- The Board of Directors and memberships will obtain membership and community support, and will provide competent management for the continued operation of the borrower entity and the facility financed with the loan.
- The borrower can provide acceptable management for the project and has corrected any management deficiencies identified by the Agency. Acceptable corrective actions may include revision of the management plan or employment of professional management services.

3. Security is Adequate

The borrower must demonstrate that the security will be adequate to protect the Agency's interests over the term of the reamortization. The Agency requires an appraisal to confirm the adequacy of the security when the reamortization will extend the term of the repayment period more than five years.

C. Approval Recommendation and State Office Review

If the Loan Servicer determines that a borrower's request meets the requirements described in paragraph B, he/she must forward the case file with a recommendation for approval to the State Office for review. If the State Office concurs with the recommendation to reamortize, it will submit the request and any other pertinent information to OGC for legal advice and closing instructions, as needed.

When the indebtedness to be reamortized exceeds the State Director's approval authority but the State Director determines that the required conditions for approval can be met, the request for reamortization, the official case file, and all other pertinent information, along with complete comments and recommendations by both the State and Loan Servicers, is sent to the National Office.

D. National Office Exception

If the State Director concludes that the conditions for a reamortization cannot be met but a reamortization would be in the best interest of the Government, the file, along with recommendations from the Field Office, will be sent to the National Office for an exception. The State Director will submit all subsequent reamortization requests for the same project to the National Office for prior authorization.

E. OGC Guidance

When OGC determines that the reamortization request is legally sufficient, the servicing official will execute the reamortization request.

F. Agency Denial of Request

If the Agency denies a request for a reamortization, it must send a formal letter to the applicant indicating the reasons for the Agency's decision and informing the applicant of appeal rights. A copy of this letter should be placed in the project's case file.

11.14 ADDITIONAL EVALUATION FOR REQUESTS INVOLVING DELINQUENCIES OR COMPLIANCE VIOLATIONS

Reamortization requests to address a delinquency or compliance violations will be approved only as part of a work-out agreement acceptable to the Agency. Reamortization may be used to address reserve accounts that are not at the authorized levels, as long as the deficiency is not due to improper or unauthorized use of reserve funds.

To obtain a reamortization to address a delinquency or compliance violations, the borrower must correct or be able to effectively address the cause of the deficiency, demonstrate that the objectives of the loan can be met following the reamortization, and meet the requirements described below. To show that the objectives of the loan can be met, the borrower must demonstrate the following:

A. Project Feasibility

The borrower must demonstrate that he/she is operating on a financially sound basis and has adequate operating income to:

- Repay the loan at the reamortized rate;
- Fund reserve accounts adequately;
- Fund tax and insurance accounts adequately;
- Pay operation and maintenance expenses as they become due; and
- Maintain an acceptable level of occupancy.

B. Property is Adequately Maintained

The borrower must ensure that it provides modest, decent, safe, and sanitary housing by properly maintaining the property.

C. Housing Remains Affordable

The borrower must provide affordable housing opportunities/services to eligible residents.

D. Compliance with Agency Regulations is Maintained

The borrower must be in compliance with all applicable Agency regulations, including:

- Providing financial information to the Agency in a timely manner; and
- Maintaining required records needed to ensure the eligibility of residents (e.g., tenant certifications).

If the borrower cannot demonstrate the ability to meet the objectives listed in paragraphs A-D above, the Loan Servicer must reject the borrower's request for reamortization of the Agency loan and provide the borrower all applicable appeal rights.

11.15 PROCESSING REAMORTIZATIONS

In general, to reamortize an account, Loan Servicers must ensure that they obtain, complete, and sign all relevant forms, and obtain OGC review of documents for legal sufficiency, if needed. To actually process a reamortization, Loan Servicers must take the following steps, as applicable.

A. Complete Reamortization Agreement

Loan Servicers will complete *Form RD 1965-16, Multiple Family Housing Reamortization Agreement*, according to the FMI. The effective date and the due date for all payments will be the first of the month, except for Labor Housing loans, whose due date will be established in accordance with the FMI.

B. Obtain Promissory Note and Assumption Agreement

If the note or assumption agreement being reamortized is not held in the Field Office, the Loan Servicer will obtain the promissory note and any assumption agreement from the Finance Office before processing the reamortization.

On the back of the original note or assumption agreement, below all signatures and endorsements, the Loan Servicer will insert the following: "A reamortization agreement dated _____, 20__, in the principal sum of \$_____, has been given to modify the payment schedule of the note."

C. Establish End of the Reamortization Period

The reamortization period will end on the final due date of the note being reamortized, unless the term is extended with the advice and guidance of OGC and the Agency's lien position is not altered. Any extension of the final due date should not exceed the lesser of the remaining useful life of the security property or the maximum term granted by the respective loan program authorizations.

The Agency may amortize the loan over a period not to exceed the remaining economic life of the project or 50 years, whichever is less. The Agency may extend the term of the loan to a period not to exceed 30 years or the remaining economic life of the project, whichever is less.

D. Establish Interest Rate

The interest rate for the account will remain unchanged except when the final due date has been extended. The interest rate charged by the Agency will be either the existing note rate, or the current rate at the time the reamortization request (*Form RD 1951-33, Reamortization Request*) is approved or closed, whichever is less.

E. Address Delinquent Reserve Accounts

The Agency may use reamortizations to address reserve accounts that are not at authorized levels, as long as the shortfall is not due to the borrower's improper or unauthorized use of reserve funds. Loan Servicers should take the following steps to address delinquent reserve accounts:

1. Modify the Loan Agreement or Resolution

The Loan Servicer should modify the loan agreement or resolution, or execute a new agreement or resolution, that bases the new fully funded amount (i.e., 10 percent of the indebtedness) and annual reserve requirement (i.e., one-tenth of the fully funded amount) on the amount of the reamortization, rather than on the original amount of indebtedness.

2. Establish Reserve Requirements

The Loan Servicer may establish reserve requirements at a higher level than the amount required for the reamortization to allow for capital expenditures that have been identified and quantified, as long as the budget will support a higher level.

3. Begin the Reserve Account with a New Base

Since the fully funded amount and annual requirement are reestablished based on the amount of the reamortization, the reserve account will begin with a new base. That is, any underfunded reserves existing prior to the reamortization will no longer be considered underfunded. In essence, the reamortization allows the borrower to begin with a "clean slate."

4. Allow the Borrower to Receive a Return on Investment

When a newly established fully funded amount and annual requirement are based on the reamortization amount, the Loan Servicer may allow the borrower to receive a return on investment if all other applicable conditions for receiving a return have been met.

F. Obtain OGC Guidance As Needed

Loan Servicers may obtain OGC guidance in the review of documents for legal sufficiency. OGC also may offer further guidance to properly perfect the reamortization.

G. Execute New Interest Credit Agreement

If the borrower is to receive interest credit benefits following the reamortization of the account, Loan Servicers will cancel the current interest credit agreement and prepare a new *Form RD 1944-7, Multi-Family Housing Interest Credit and Rental Assistance*.

H. Close the Reamortization

The Agency always closes reamortizations on the first day of the month. Unpaid interest to the date of closing may be capitalized.

I. Meet Other Procedural Requirements

In addition, Loan Servicers need to ensure that the following procedural requirements are met:

- All reamortized loans must be closed on PASS. All initial and subsequent loans must convert to PASS in connection with the reamortization.
- When recoverable cost items are involved, they are first capitalized by adding them to the principal loan balance outstanding on the oldest loan and then the entire indebtedness (principal plus outstanding interest, overage, and late fees) is reamortized.
- Audit receivables and late fees may be reamortized.

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SECTION 4: LOAN WRITEDOWNS

11.16 OVERVIEW

In cases of severe financial distress, the Agency may agree to a writedown of the debt, whereby the Agency agrees to reduce the outstanding loan amount. Writedowns should occur only when the value of the property is less than the outstanding Agency debt.

Generally, writedowns will occur simultaneously with a transfer and assumption for less than the total amount of outstanding debt. However, the Agency may write down debts and continue the account with the same borrower if doing so is in the best interest of the Agency, the property, and tenants.

In all cases, writedowns must be part of an approved work-out plan with the Agency, in the Government's best interest, and designed to correct circumstances beyond the borrower's control. Writedowns require approval by the State Director. The Agency should consider the project's suitability in accordance with Chapter 6 before approving a writedown.

Borrower equity in the project following the writedown will be no less than five percent of the amended loan balance for for-profit owners. The borrower may realize the eight percent return on investment on a maximum of five percent equity, if applicable. A reduced return may be authorized on amounts of equity contributed greater than five percent. Nonprofit and public agency borrowers may enter into workouts that propose loan-to-value ratios of 100 percent.

11.17 ALLOWABLE USES

Writedowns may only be approved when the conditions leading to a default were beyond the borrower's control and management is generally sound. Writedowns are used to address severe financial difficulties with a project and the Agency will consider all available servicing options before approving a writedown. Some examples of circumstances where a writedown might be an acceptable servicing solution include:

- Sustained market weaknesses in the property's community or region;
- Unforeseen site problems; or
- A natural disaster results in significant damage to the property.

11.18 BORROWER SUBMISSIONS

Borrowers requesting writedowns must submit the following documents to the Field Office:

- *Form RD 1951-33, Reamortization Request*; and

- A work-out plan, which includes:
 - ◊ A revised budget; and
 - ◊ A narrative description of project difficulties and proposed corrective actions.

11.19 AGENCY REVIEW AND APPROVAL

A. Appraisal

In order for a borrower to receive Agency approval for a writedown, the Agency is responsible for obtaining a value-in-use appraisal, for both the subsidized and unsubsidized value of the property. The Agency generally will not approve a writedown to an amount that is lower than the “as-is” unsubsidized value of the property. The Agency may require the general partner or primary person controlling the borrower to exit or waive equity, or both, to qualify for the writedown.

B. OGC Advice

OGC advice is required for all writedowns. The OGC review will primarily focus on the legal sufficiency of the transferee’s organizational documents in cases where the writedown is occurring concurrently with a transfer.

C. Approval

The State Office as part of the writedown approval process will review the following items:

- Field Office recommendation;
- Eligibility review; and
- An appraisal of the property.

The State Director is the approval official. The State Director may determine whether a writedown that does not include a change in the management structure of the project is acceptable.

11.20 PROCESSING WRITEDOWNS

To process a writedown, Loan Servicers must reexecute the note and Deed of Trust, and amend the loan agreement or loan resolution. The Loan Servicer must document all changes related to writedowns by completing an amended consolidation form.